enforce a part of a person's contract when it cannot specifically enforce the whole. It is a rule that unless the terms of an agreement are distinct and independent, equity will not enforce one term without enforcing all. *Kemble* v. *Kean*, 6 Sim. 333. The famous case of *Lumley* v. *Wagner*, 1 DeG., M. & G. 604, relied upon by the present plaintiff, is not really inconsistent with the rule stated; for the express negative term which was there enforced, the agreement of an opera singer not to sing during a certain period for any one but the plaintiff, was dealt with as independent of the positive agreement to sing for the plaintiff; and those who attempt to support that case must first take the step of holding the negative agreement independent. When the rule is applied to the principal case, it is clear that the affirmative part of the defendant's contract could not have been enforced, because of the impossibility of the court's supervising performance. The negative terms, therefore, — one of them, by the way, being negative only in form, and by a clever subterfuge, — could not consistently with the rule have been enforced unless independent. Independent they can hardly be, for they were not expressed in the contract, and exist merely by implication from the positive terms. Their very existence by implication seems unjustifiable; but if they are implied, they must depend absolutely upon the affirmative terms from which they are inferred. *Whitwood Chemical Co.* v. *Hardman*, [1891] 2 Ch. 416. Since they are dependent, the argument based upon *Lumley* v. *Wagner*, *supra*, had no application to them, and they could not properly have been enforced unless the case falls within the further rule that when the affirmative part of a contract is unbroken and in a fair way to be performed, equity will enforce the negative part on the assurance that the whole will then be performed. The case, however, is not within that rule; for although the affirmative part of the defendant's contract was as yet unbroken at the time of the filing of the bill, the court had no assurance that it would not be broken, and had no means of preventing the breach. The injunction, therefore, was rightly refused. Great hardship might otherwise have been inflicted upon the defendant; for after the negative injunction had tied his hands and prevented him from making a profit from any other party, the plaintiff might have held him for full damages in an action at law for breach of the affirmative part of the contract, and the injunction would serve no purpose in mitigation of damages. Such injustice equity will not countenance.

Locus Pœnitentiæ of a Trustee. — Whether a trustee who, in collusion with a third person, has wrongfully conveyed the trust-res, may repent and bring a bill for the recovery of the property, is a problem which on theory may well admit of different solutions. The question often arises in respect to the Statute of Limitations, where the grantee, to whom the trustee has wrongfully conveyed, holds for the statutory period; is the trustee barred by the statute, as well as the *cestui que trusts* who were under disabilities at the time the conveyance was made? An answer in the affirmative was given in a recent Kentucky case on the principle that as the trustee might at any time during the statutory period have recovered the property in equity, he is barred, and what bars the trustee bars the *cestui*. *Willson* v. *Louisville Trust Co.*, 44 S. W. Rep. 121 (Ky.).

The suggestion at once presents itself that a trustee who has committed a breach of trust should not be permitted to recover the property, but that the grantee with notice be made a constructive trustee for the original *cestui que trust*, until a new trustee be appointed by the court. It is often said in decisions that the trustee files the bill solely in his representative capacity; but was it not in his representative capacity that he committed the breach of trust? "It is the duty of the trustee to repair his breach of trust;" yes, if the *cestui* files a bill against him for compensation; but does not justice demand in protection of the *cestui* that administration of the trust cannot be claimed as of right by one who has proved himself incapable of administration, and that the property be put into safer and more worthy hands? It is true that if the grantee give back the property to the original trustee the latter's duties revive; but this is very different from saying that such a wrongdoer may of right demand administration again. And if on the view of holding the grantee with notice a constructive trustee for the original *cestui*, the grantee would be liable for giving back the property to the original trustee, such a logical result does not seem too harsh. It may be futile, however, at the present date to deny that the wrongful trustee has a *locus pœnitentiæ*, and by a bill in equity may get back the trust property, which doctrine seems now well settled by authority. *Wetmore* v. *Porter*, 92 N. Y. 76.

If the view above taken were accepted, the principle advocated in *Willson* v. *Louisville Trust Co.* could not stand, for the original trustee simply dropping out, the statute would not run in favor of the constructive trustee while the *cestuis* were under disabilities. But even if *Wetmore* v. *Porter* be supported, it is still difficult to follow the reasoning of the Kentucky case on this point. The action which the original trustee would bring to recover the trust-res being in equity, even if the statutory period has run equity will not follow the analogy of the statute where it would work manifest injustice. It is questionable, then, if, in this case, equity should bar the *cestui que trusts* who were young infants or not yet born when the wrongful conveyance was made.

SPONTANEOUS COMBUSTION IN MARINE INSURANCE. — There have been few decided cases on the question of recovery on a marine insurance policy against fire and the perils of the sea for loss by spontaneous combustion. It seems to be well settled, however, that in such case the owner of the goods insured is barred the recovery of his insurance on the principle that spontaneous combustion is caused by an "inherent vice" in the goods themselves, not by any peril of the sea, and is therefore not within the terms of the policy. *Providence Washington Ins. Co.* v. *Adler*, 65 Md. 162. But if the owner of the goods is thus precluded from recovery, will the same principle of inherent vice prevent the owner of the vessel from recovering insurance on his freight which he has lost through spontaneous combustion, or a necessary discharge of the goods to prevent such disaster? This question was presented for the first time, it seems, in the recent English case of *The Knight of St. Michael*, [1898] P. 30. When half way through the voyage a part of the cargo of coal on the vessel became so heated as to cause imminent danger of spontaneous combustion, and the captain was obliged to discharge a portion of the cargo at an intermediate port. In an action by the owner of the vessel for the insurance on the freight thus lost to him, the court gave